

Proposed Community Association Manager Licensing Rules - For Review and Comment Only (G Rules: Declaratory Orders)

G-1) Any person may petition for an order.

Any person may petition the Director for a declaratory order to terminate controversies or to remove uncertainties as to the applicability to the petitioner of any statutory provisions or of any rule or order of the Director.

G-2) Director determines whether to rule.

The Director will determine, in his/her discretion and without prior notice to the petitioner, whether to rule upon any such petition. If the Director determines he/she will not rule upon such a petition, the Director will issue a written order disposing of the same, stating therein his/her reasons for such action. A copy of such order will be provided to the petitioner.

G-3) Director considerations.

In determining whether to rule upon a petition filed pursuant to this rule, the Director will consider the following matters, among others:

- 1) Whether a ruling on the petition will terminate a controversy or remove uncertainties as to the applicability to petitioner of any statutory provision or rule or order of the Director;
- 2) Whether the petition involves any subject, question or issue which is the subject of a formal or informal matter or investigation currently pending before the Director or a court involving one or more of the petitioners which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Director, which matter or investigation will be specified by the Director;
- 3) Whether the petition involves any subject, question or issue which is the subject of a formal matter or investigation currently pending before the Director or a court but not involving any petitioner which will terminate the controversy or remove the uncertainties as to the applicability to the petitioner of any statutory provision or of any rule or order of the Director, which matter or investigation will be specified by the Director and in which petitioner may intervene;
- 4) Whether the petition seeks a ruling on a moot or hypothetical question and will result in merely an advisory ruling or opinion;
- 5) Whether the petitioner has some other adequate legal remedy, other than an action for declaratory relief, which will terminate the controversy or remove any uncertainty as to the applicability to the petitioner of the statute, rule or order in question.

G-4) Petition contents.

Any petition filed pursuant to this rule will set forth the following:

- 1) The name and address of the petitioner and whether the petitioner holds a license issued pursuant to § 12-61-1001, *et. seq.*, C.R.S. (as amended).

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- 2) The statute, rule or order to which the petition relates.
- 3) A concise statement of all the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to the petitioner.
- 4) A concise statement of the legal authorities if any, and such other reasons upon which the petitioner relies.
- 5) A concise statement of the declaratory order sought by the petitioner.

G-5) Procedures if the Director will rule.

If the Director determines that he/she will rule on the petition, the following procedures will apply:

- 1) The Director may rule upon the petition based solely upon the facts presented in the petition. In such a case:
 - a) Any ruling of the Director will apply only to the extent of the facts presented in the petition and any amendment to the petition;
 - b) The Director may order the petitioner to file a written brief, memorandum or statement of position;
 - c) The Director may set the petition, upon due notice to petitioner, for a non-evidentiary hearing;
 - d) The Director may dispose of the petition on the sole basis of the matters set forth in the petition;
 - e) The Director may request the petitioner to submit additional facts in writing. In such event, such additional facts will be considered as an amendment to the petition;
 - f) The Director may take administrative notice of facts pursuant to the Administrative Procedure Act (C.R.S. 1973, 24-4-105(8)) and utilize his/her experience, technical competence and specialized knowledge in the disposition of the petition;
 - g) If the Director rules upon the petition without a hearing, he/she will issue a written order, stating therein his/her basis for the order. A copy of such order will promptly be transmitted to the petitioner.
- 2) The Director may, in his/her discretion, set the petition for hearing, upon due notice to the petitioner, for the purpose of obtaining additional facts or information or to determine the truth of any fact set forth in the petition or to hear oral argument on the petition. Notice to the petitioner setting such hearing will set forth, to the extent known, the factual or other matters into which the Director intends to inquire. For the purpose of such a hearing, to the extent necessary, the petitioner will have the burden of proving all of the facts stated in the petition, all of the facts necessary to show the nature of the controversy or uncertainty and the manner in which the statute, rule or order in question applies or potentially applies to petitioner and any other facts the petitioner desires the Director to consider.

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G-6) Parties to proceedings.

The parties to any proceeding pursuant to this rule will be the Director and the petitioner. Any other person may seek leave of the Director to intervene in such a proceeding, and leave to intervene will be granted at the sole discretion of the Director. A petition to intervene will set forth the same matters as required by Rule G-4. Any reference to a “petitioner” in this rule also refers to any person who has been granted leave to intervene by the Director.

G-7) Orders subject to judicial review.

Any declaratory order or other order disposing of a petition pursuant to this rule will constitute agency action subject to judicial review pursuant to § 24-4-106, C.R.S. (as amended).